

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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KENNETH ROBERSON,

Plaintiff,

v.

JAMES GREER,  
MICHAEL DITTMAN,  
PHILLIP HOECHST,  
JAMIE GOHDE,  
LUCINDA BUCHANAN,  
RACHAEL PAFFORD,  
ROY DAVENPORT and  
BRIAN KLEEBER,<sup>1</sup>

Defendants.

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OPINION AND ORDER

Case No. 20-cv-376-wmc

Plaintiff Kenneth Roberson, who is currently incarcerated by the Wisconsin Department of Corrections (“DOC”) at Columbia Correctional Institution (“Columbia”), brings this action under 42 U.S.C. § 1983 against several DOC officials, claiming that their responses to his need for a new wheelchair violated his constitutional rights. Since commencing this lawsuit, plaintiff has retained counsel, who filed an amended complaint (dkt. #8), which the court screened as required by 28 U.S.C. § 1915A. For the reasons the follow, the court will grant Roberson leave to proceed on Eighth Amendment medical care deliberate indifference claims against all of the named defendants except for James Greer.

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<sup>1</sup> Plaintiff spells this defendant’s last name differently throughout the amended complaint. The court has used the spelling that appears most frequently and asks the parties to correct the court if this spelling is incorrect.

## ALLEGATIONS OF FACT<sup>2</sup>

Plaintiff Kenneth Roberson was incarcerated at Columbia for all times relevant to his claims in this lawsuit. He names eight defendants, who worked in the following positions during the relevant time frame: James Greer was the DOC's Director of the Bureau of Health Services ("BHS"); Michael Dittman was Columbia's warden; Phillip Hoechst was a physical therapist at Columbia; Jamie Gohde and Lucinda Buchanan were registered nurses who worked as Columbia's Health Services Unit manager ("HSM"); Rachael Pafford worked as a Medical Program Assistant Associate at Columbia; and Roy Davenport and Brian Kleeber were both correctional officers at Columbia.

Roberson has been incarcerated by the DOC since April of 2013, when he was admitted to Dodge Correctional Institution ("Dodge"). On August 27, 2014, Roberson underwent emergency surgery to amputate both legs above the knee. Roberson subsequently had other serious health issues. In January 2015 he was admitted to U.W. Hospital with pulmonary embolus, and in October 2015 he was treated at a hospital for a heart attack and two stents were placed. A week after his October 2015 hospital visit, Roberson unfortunately experienced an acute in-stent thrombosis and underwent a second stenting of the marginal artery.

From August 2014 to October 14, 2015, Roberson remained at Dodge for post-operative care, but was then transferred to Columbia, an institution equipped with cells and elevators for prisoners with physical handicaps. When he arrived at Columbia, Roberson received a standard DOC wheelchair, which was inadequate for his needs because it was too

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<sup>2</sup> Courts must read allegations in *pro se* complaints generously, resolving ambiguities and drawing reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). The court assumes the facts above based on the allegations made in plaintiff's amended complaint.

small; was not rated for his size and weight; and lacked a seat belt, anti-tip bars, and working brakes.

Roberson attempted to make do with the inadequate wheelchair, but it became apparent that the chair was unsuitable and unsafe. On August 2 and 8 of 2016, Roberson submitted Health Services Requests (“HSRs”) to the HSU, requesting that his wheelchair be repaired to meet his needs. Shortly after submitting those HSRs, Roberson encountered defendant Warden Dittman, and Roberson told Dittman that his wheelchair was broken, that the weld on the back left side was broken, and that the seat was dragging. Roberson further explained that the wheelchair did not fit him, and that because it was not equipped with counterbalance bars, he did not feel safe in it. Dittman responded that he would tell a nurse, non-defendant registered nurse Kristine DeYoung, to get him a new wheelchair.

On August 11, 2016, DeYoung responded to Roberson’s August 8 HSR, writing that she would try to expedite the wheelchair’s repair. In October, after no repairs were made, Roberson submitted multiple HSR’s asking the status of his wheelchair repair and reporting that he kept falling out of his wheelchair. On October 21, 2016, HSM Gohde responded to one of his HSR’s, writing that the repairs had just been approved.

On November 2, 2016, Roberson’s wheelchair was repaired and returned to him. However, the wheels had not been properly balanced, so on November 14, Roberson submitted an HSR asking that the left wheel be repaired. That repair was made, and his wheelchair was returned on November 16. However, the wheel broke, so he submitted an HSR two days later, asking for repair of the wheel or a new wheelchair. (When his wheelchair was out for repair, Roberson received a standard DOC wheelchair that was inadequate and unsafe.) On

November 21, 2016, Gohde responded that the wheelchair repair was scheduled for the first week of December, but in the meantime the wheelchair continued to break down.

Roberson submitted two more HSRs at the beginning of December again inquiring about a new wheelchair and stating that he was concerned about it flipping over. Gohde responded on December 14 that they were waiting on a new part to fix the chair, and that she would follow up with the repairman about why it kept breaking down. It appears that nothing was done to repair his wheelchair in December, January or February, even though Roberson continued to file similar HSRs throughout that time, reporting that his wheelchair had broken in a different place and that he had flipped over backwards several times. Although at the beginning of March a nurse referred one of Roberson's HSRs to Gohde, it does not appear that Gohde responded.

On March 13, 2017, a non-defendant physician at Columbia, Dr. Hoffman, met with Roberson and ordered a follow-up with his special wheelchair needs (noting in particular the need for counterbalance anti-tip bars), and for a physical therapist to evaluate all of Roberson's need for a new wheelchair. Roberson followed up with an HSR on April 17, 2017, asking if anti-tip bars would be added to his wheelchair, and Gohde responded a few days later, reporting that they had not received the bars yet but expected to hear back on April 21. On that date, Gohde wrote in Roberson's notes that a wheelchair had been ordered for him, but not anti-tip bars. She further wrote that the physical therapist would evaluate his needs.

Three months later, in July of 2017, Roberson followed up with Gohde and physical therapist Phillip Hoechst about the status of his wheelchair and anti-tip bars, and a nurse informed him at the end of July that they were still waiting for his wheelchair. When he still heard nothing by mid-August, Roberson submitted an HSR, and on August 15, 2017, a nurse

responded: “wheelchair information recently found in old HSM office. Reorder status unknown. Involving interim HSUM, [the Bureau of Health Services] coordinator and business office to expedite. So sorry.” (Am. Compl.(dkt. #8) ¶ 57.) Another month passed, and in mid-September Roberson followed up and learned that there was no follow-up scheduled for him at that time. At the end of September, a nurse informed Roberson that his new wheelchair had been located, but Roberson did not receive any more information about when he would receive it.

Almost two months passed, and on October 9, 2017, Roberson submitted an HSR asking when he would see the physical therapist to be fitted for the new wheelchair, and Hoechst responded that there was no appointment scheduled. When Roberson followed up again, a nurse responded that she forwarded the HSR to physical therapy for scheduling, but Hoechst did not call Roberson for an appointment at that time or in November when Roberson followed up again.

Roberson continued to inquire about his wheelchair, and in November he learned that the wheelchair was located at the institution but was waiting for repairs. Understandably frustrated, on November 20, Roberson wrote a letter directly to defendant BHS Director Greer, reporting that he was supposed to have received a new wheelchair a year ago, but was still being forced to use an unsafe wheelchair with no seat belt and no anti-tip bars. Greer did not respond to that letter; instead, in August of 2018, non-defendant Lon Becher responded on Greer’s behalf, writing that he understood that Columbia was still working on obtaining a new wheelchair and that Becher had provided information to the nursing supervisor to facilitate the ordering process.

In the meantime, Roberson kept trying to work with Columbia officials, to no avail. On February 8, 2018, Roberson spoke with Dittman, and Roberson reminded him of their conversation about a new wheelchair because the wheelchair he was using was unsafe. Dittman responded that he believed that issue had been resolved and assured Roberson he would take care of it.

In March 2018, when his wheelchair still had not been replaced, Roberson inquired again about seeing the physical therapist and defendant Pafford responded that Roberson was not scheduled to see the physical therapist. It further appears that Pafford did not schedule Roberson for such an appointment. Also in March, a nurse responded to one of Roberson's many HSRs that staff had presumed the issue had been resolved, and apologized for the delay, but again Roberson did not receive a new wheelchair. Roberson followed up in May about his need for a wheelchair, including writing directly to Warden Dittman, reminding Dittman of their conversations and his assurances, again with no response. Although Roberson was told at the end of May that an order for a wheelchair had been placed, Roberson did not receive a new wheelchair that summer.

Roberson reengaged in November about his wheelchair, and a nurse responded that his inquiry about his wheelchair had been forwarded to Pafford for ordering. A November 29, 2018, note in Roberson's records shows that a nurse practitioner ordered Roberson a new wheelchair and a physical therapy evaluation. Yet another three months passed, Roberson heard nothing, and Hoechst did not evaluate him. On March 31, 2019, Roberson wrote to defendant HSM Buchanan that his medical needs were not being met, and that he needed an adequate wheelchair after nearly three years of requesting one. Buchanan did not respond to that letter.

An April 11, 2019, progress note in Roberson's records indicates that a non-defendant physician, Dr. Roman Kaplan, wrote that the wheelchair was not adjusted to Roberson's needs and caused him pain and ordered a new wheelchair. An April 29, 2019, nursing note says that Roberson requires a wheelchair with seat belt and tilt bars, and it must be weighted on the right side. She also noted that she was putting an order for physical therapy in the physical therapist's mailbox.

On June 20, 2019, Roberson reported that he believed his wheelchair was "getting more dangerous." (Am. Compl. (dkt. #8) ¶ 91.) That HSR was forwarded to Buchanan and the physical therapist, but when Roberson followed up about physical therapy and a wheelchair, a nurse responded that she was unable to find physical therapy orders. A July 2, 2019, nursing note says that the front wheels of Roberson's wheelchair were tucking under, possibly due to the bearing breaking.

On July 9, 2019, defendants COs Davenport and Kleeber were transporting Roberson (who was using his wheelchair), in a van from Columbia to Madison, Wisconsin. Neither CO restrained Roberson with a seat belt before the drive started, and Roberson flipped out of his wheelchair when the van stopped suddenly. Roberson landed on his face and right shoulder, causing pain and injury that later required treatment in the HSU.

On July 24, 2019, non-defendant physician Dr. Masciopinto ordered a new wheelchair with tip bars, waist seat belt, and shoulder strap, and a big pad in the seat with weight distribution. However, on August 3, when Roberson was still using the old wheelchair, he flipped out of it and fell, requiring an x-ray and pain relief. Roberson finally received a new wheelchair in October 2019, but that wheelchair was also unsafe because staff modified the

design and structure of the wheelchair, which caused him to flip out of it. Roberson finally received a new wheelchair with the appropriate specifications on February 15, 2021.

## OPINION

Plaintiff seeks to proceed against defendants for violation of his Eighth Amendment rights. The Eighth Amendment requires prison officials to ensure that “reasonable measures” are taken to guarantee inmate safety and prevent harm. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). An inmate may prevail on such a claim by alleging that (1) he faced a “substantial risk of serious harm” and (2) the identified prison officials responded with “deliberate indifference,” meaning that they “kn[ew] of and disregard[ed] an excessive risk to inmate health or safety.” *Id.* at 834. A prison official may also violate the Eighth Amendment if the official is “deliberately indifferent” to a “serious medical need.” *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). “Serious medical needs” include (1) conditions that are life-threatening or that carry risk of permanent serious impairment if left untreated, (2) withholding of medical care that results in needless pain and suffering, or (3) conditions that have been “diagnosed by a physician as mandating treatment.” *Gutierrez v. Peters*, 111 F.3d 1364, 1371 (7th Cir. 1997). “Deliberate indifference” means that the officials are aware that the prisoner needs medical treatment, but are disregarding the risk by consciously failing to take reasonable measures. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997).

As an initial matter, at this stage the court accepts that plaintiff’s need for a wheelchair with specifications to ensure that he did not fall or flip the wheelchair constitutes a serious medical need. With respect to defendants Hoechst, Gohde, Buchanan and Pafford, plaintiff’s allegations are sufficient for him to proceed, all for similar reasons. In particular, as pled, each

of these defendants was aware not only that the wheelchair plaintiff was using was inadequate, unsafe and broken, but further that they either took no steps, or ineffectual steps, to facilitate an order for a new, adequate wheelchair. Rather, it appears that these defendants allowed the various orders for physical therapy and a new wheelchair to remain in limbo for years at a time, seemingly without reason or justification. Although fact-finding may reveal that Gohde, Buchanan and Pafford took all appropriate actions within their power to obtain a new and adequate wheelchair for plaintiff, plaintiff's allegations suggest at most that they knowingly ignored his need for a new wheelchair or responded to that need with reckless disregard. Likewise, while discovery may reveal that Hoechst somehow never received the numerous physical therapy orders that were directed to him, at this stage it is reasonable to infer that Hoechst was aware that multiple health care providers had ordered that a physical therapist assess Roberson's particular needs and failed to (or refused to) assess him, leading to numerous falls.

Plaintiff may also proceed against Davenport and Kleeber but based on a slightly different legal theory. Davenport and Kleeber were responsible for plaintiff's July 2019 transport when he fell out of his wheelchair, apparently because neither defendant insured that plaintiff was safely secured in his wheelchair during the transport. It would have been obvious to both defendants that there was a substantial risk of injury if plaintiff was transported without being properly secured in his wheelchair within the van, and, at least as pled, both Davenport and Kleeber ignored that risk. Fact-finding may bear out that these defendants acted with mere negligence in failing to properly secure him prior to that transport, which would not support an inference of deliberate indifference. *See Vance*, 97 F.3d at 992 (inadvertent error, negligence, and gross negligence are not cruel and unusual punishment

within the meaning of the Eighth Amendment). Yet, since the court must resolve all ambiguities at this point in plaintiff's favor, the court accepts that defendants recklessly disregarded the substantial risk that plaintiff would be injured during that transport. Therefore, the court will grant him leave to proceed against these defendants, also on Eighth Amendment deliberate indifference claims.

Finally, as to Greer and Dittman, since § 1983 does not hold supervisors accountable under a theory of *respondeat superior*, these defendants may not be held personally liable for the actions of the other defendants who were involved in responding to plaintiff's ongoing complaints. *Chavez v. Ill. State Police*, 251 F.3d 6132, 651 (7th Cir. 2001); *see also Zimmerman v. Tribble*, 226 F.3d 568, 574 (7th Cir. 2000) (rejecting § 1983 action against individuals merely for their supervisory role of others). However, plaintiff maintains that both defendants both knew about his need for a new wheelchair and responded with deliberate indifference. Plaintiff's allegations support such a claim against Dittman, but not Greer.

As pled, Dittman was well aware of plaintiff's need for a new wheelchair, based on two in-person conversations Dittman had with plaintiff, during which Dittman allegedly said he would make sure that plaintiff received an adequate wheelchair. In fairness, Dittman's response to their first conversation in August of 2016 does not suggest deliberate indifference; it appears that after their conversation Dittman followed up with Nurse DeYoung, who told plaintiff she would attempt to expedite his wheelchair repair. However, Dittman learned in February of 2018 that plaintiff *still* had not received a new wheelchair, and again assured plaintiff that he would receive a new wheelchair, but nothing came of that assurance. Worse, plaintiff followed up in writing to Dittman in May of 2018, and it appears Dittman failed to acknowledge or act on that letter. Given Dittman's apparent knowledge about the severity of

plaintiff's need for an adequate wheelchair, it is reasonable to infer that in 2018 Dittman recklessly disregarded Roberson's clear need for an adequate wheelchair. Again, fact-finding may bear out that Dittman actually took steps to ensure that the proper orders were in place and it was the HSU defendants who were the bottleneck preventing plaintiff from obtaining a new wheelchair for so long, but plaintiff's allegations as to Dittman are sufficient to survive the generous pleading standard.

However, the same inference is not available with respect to Greer. Plaintiff wrote to Greer in November of 2017, and several months later, Becher responded on Greer's behalf. As the BHS Director, Greer was entitled to delegate certain tasks, including responding to plaintiff's letter, to individuals under his direction. *See Burks v. Raemisch*, 555 F.3d 592, 595 (7th Cir. 2009) (rejecting the notion that "everyone who knows about a prisoner's problem must pay damages," since high-level prison officials must have the ability to delegate tasks for orderly administration). Plaintiff has not otherwise alleged that Greer was aware of his circumstances at the time plaintiff wrote the letter or subsequently, much less that he responded to plaintiff's serious medical need with deliberate indifference. Accordingly, the court will not grant plaintiff leave to proceed against Greer, who will be dismissed from this lawsuit, but plaintiff will be allowed to proceed against the rest of the defendants on Eighth Amendment deliberate indifference claims.

## ORDER

IT IS ORDERED that:

1. Plaintiff Kenneth Roberson is GRANTED leave to proceed against defendants Hoechst, Gohde, Buchanan, Pafford, Davenport, Kleeber and Dittman, on Eighth Amendment medical care deliberate indifference claims, as provided above.

2. Plaintiff is DENIED leave to proceed on any other claim, and defendant Greer is DISMISSED.
3. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the state defendants. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to plaintiff's complaint if it accepts service for the defendants.

Entered this 5th day of November, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge